

SJ 3: Study the Board of Pardons and Parole

Preliminary Bill Drafts (not yet formally requested as committee bills)

For discussion in April 2014

Draft Number	Concept	Status	Drafter	Committee Action?
LClj99	Revise MAPA provisions related to BOPP	Preliminary draft -- not yet approved as formal committee bill	Burkhardt	
LClj98	Revise MAPA provisions related to BOPP	Preliminary draft -- not yet approved as formal committee bill	Burkhardt	
LClj97	Require parole hearings to be recorded	Preliminary draft -- not yet approved as formal committee bill	Weiss	
LClj96	Prohibit BOPP from assigning conditions of parole	Preliminary draft -- not yet approved as formal committee bill	Burkhardt	
LClj95	Revise parole criteria	Preliminary draft -- not yet approved as formal committee bill	Weiss	

Last updated April 15, 2014

Law and Justice Meeting
April 28, 2014

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As of: April 15, 2014 (10:00am)

LC1j99

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act ."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-102, MCA, is amended to read:

"2-4-102. (Temporary) Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative rule review committee" or "committee" means the appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of state government, except that the provisions of this chapter do not apply to the following:

~~(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;~~

~~(ii)~~ (i) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youth or prisoners;

~~(iii)~~ (ii) the board of regents and the Montana university system;

~~(iv)~~ (iii) the financing, construction, and maintenance of

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public works;

~~(v)~~(iv) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837.

(b) The term does not include a school district, a unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) (a) "Interested person" means a person who has expressed to the agency an interest concerning agency actions under this chapter and has requested to be placed on the agency's list of interested persons as to matters of which the person desires to be given notice.

(b) The term does not extend to contested cases.

(6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a

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party, but this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

(9) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(10) "Register" means the Montana Administrative Register.

(11) (a) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule.

(b) The term does not include:

(i) statements concerning only the internal management of an agency or state government and not affecting private rights or procedures available to the public, including rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and human resource system;

(ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(iii) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use

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of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals; or

(v) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ARM.

(12) (a) "Significant interest to the public" means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals.

(b) The term does not extend to contested cases.

(13) "Small business" means a business entity, including its affiliates, that is independently owned and operated and that employs fewer than 50 full-time employees.

(14) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law. (Terminates July 1, 2015--sec. 6, Ch. 318, L. 2013.)

2-4-102. (Effective July 2, 2015) Definitions. For purposes of this chapter, the following definitions apply:

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As of: April 15, 2014 (10:00am)

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(1) "Administrative rule review committee" or "committee" means the appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of state government, except that the provisions of this chapter do not apply to the following:

~~(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;~~

~~(ii)~~ (i) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youth or prisoners;

~~(iii)~~ (ii) the board of regents and the Montana university system;

~~(iv)~~ (iii) the financing, construction, and maintenance of public works;

~~(v)~~ (iv) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837.

(b) The term does not include a school district, a unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking,

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price fixing, and licensing.

(5) (a) "Interested person" means a person who has expressed to the agency an interest concerning agency actions under this chapter and has requested to be placed on the agency's list of interested persons as to matters of which the person desires to be given notice.

(b) The term does not extend to contested cases.

(6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

(9) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(10) "Register" means the Montana Administrative Register.

(11) (a) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule.

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(b) The term does not include:

(i) statements concerning only the internal management of an agency or state government and not affecting private rights or procedures available to the public, including rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and human resource system;

(ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(iii) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals; or

(v) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ARM.

(12) (a) "Significant interest to the public" means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals.

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(b) The term does not extend to contested cases.

(13) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

{Internal References to 2-4-102:

2-11-103	2-11-103	2-17-807	13-2-221
16-11-149	40-5-232	40-5-277 }	

- END -

{Name : Julianne Burkhardt
Title : Legislative Attorney
Agency: Legislative Services
Phone : 4025
E-Mail: jburkhardt@mt.gov}

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As of: April 15, 2014 (10:00am)

LC1j98

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act ."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-102, MCA, is amended to read:

"2-4-102. (Temporary) Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative rule review committee" or "committee" means the appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole is exempt from the contested case and the judicial review of contested cases contained in this chapter, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youth or prisoners;

(iii) the board of regents and the Montana university system;

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(iv) the financing, construction, and maintenance of public works;

(v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837.

(b) The term does not include a school district, a unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) (a) "Interested person" means a person who has expressed to the agency an interest concerning agency actions under this chapter and has requested to be placed on the agency's list of interested persons as to matters of which the person desires to be given notice.

(b) The term does not extend to contested cases.

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properly seeking and entitled as of right to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

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(b) The term does not include:

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(ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(iii) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

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annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals; or

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(12) (a) "Significant interest to the public" means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals.

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2-4-102. (Effective July 2, 2015) Definitions. For purposes

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(i) the state board of pardons and parole is exempt from the contested case and the judicial review of contested cases contained in this chapter, ~~except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;~~

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(ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(iii) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

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(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

{ Internal References to 2-4-102:

2-11-103	2-11-103	2-17-807	13-2-221
16-11-149	40-5-232	40-5-277 }	

- END -

{Name : Julianne Burkhardt
Title : Legislative Attorney
Agency: Legislative Services
Phone : 4025
E-Mail: jburkhardt@mt.gov}

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As of: April 15, 2014 (9:28AM)

LC1j97

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act requiring the board of pardons and parole to electronically record meetings of the board and all hearings held to consider parole, rescission, revocation, or clemency decisions; and amending section 46-23-110, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-23-110 , MCA, is amended to read:

"46-23-110. Records -- dissemination. (1) The department and the board shall keep a record of the board's acts and decisions, including that meetings held pursuant to 46-23-104(2) and all hearings conducted under part 2 or part 3 of this chapter or 46-23-1025 must be electronically recorded. Citizens may inspect and make copies of the public records of the board, as provided in 2-6-102, 2-6-110, and this section.

(2) Records and materials that are constitutionally protected from disclosure are not subject to disclosure under the provisions of subsection (1). Information that is constitutionally protected from disclosure is information in which there is an individual privacy or safety interest that clearly exceeds the merits of public disclosure.

(3) Upon a request to inspect or copy records of the board's

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acts and decisions, the board or a board staff member shall review the file requested and determine whether any document in the file or content in an electronic recording is subject to a personal privacy or safety interest that clearly exceeds the merits of public disclosure.

(4) The board may assert the privacy or safety interest and may withhold a document or redact content of an electronic recording if the board determines that the demand for individual privacy clearly exceeds the merits of public disclosure or if the document's or recording's contents would compromise the safety, order, or security of a facility or the safety of facility personnel, a member of the public, or an inmate of the facility if disclosed.

(5) The board may not withhold from public scrutiny under subsections (2) through (4) any more information than is required to protect an individual privacy interest or a safety interest.

(6) (a) The board may charge a reasonable fee for copying and inspecting records.

(b) The board may charge a reasonable fee for an electronic recording as provided in 2-6-110.

(7) The board may limit the time and place that the records may be inspected or copied."

{ Internal References to 46-23-110: None. }

- END -

{Name : Rachel J. Weiss
Title : Research Analyst
Agency : Legislative Services Division
Phone : 406-444-5367
E-Mail : rweiss@mt.gov}

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As of: April 16, 2014 (9:50am)

LC1j96

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act ; amending sections 46-23-103, 46-23-201, 46-23-215, 46-23-218, 46-23-1001, 46-23-1002, and 46-23-1021, MCA."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Conditions of Parole.** (1) After the board grants a parole to a prisoner, the department shall supervise the parolee during the parole period in accord with the conditions set by the department or the sentencing judge. If the sentencing judge did not set conditions of parole at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of parole. The parolee must be present at the hearing. The parolee has the right to counsel as provided in chapter 8 of this title.

(2) A copy of the conditions of parole must be signed by the parolee. The department may require a parolee to waive extradition for the parolee's return to Montana.

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As of: April 16, 2014 (9:50am)

LC1j96

Section 2. Section 46-23-103, MCA, is amended to read:

"46-23-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of pardons and parole provided for in 2-15-2302.

(2) "Department" means the department of corrections provided for in 2-15-2301.

(3) "Executive clemency" refers to the powers of the governor as provided by section 12 of Article VI of the constitution of Montana.

(4) "Hearing panel" means a panel made up of two or three board members appointed to conduct parole hearings, revocation hearings, rescission hearings, and administrative parole reviews and to make final decisions and recommendations in matters of executive clemency.

(5) "Parole" means the release to the community of a prisoner by the decision of a hearing panel prior to the expiration of the prisoner's term, subject to conditions imposed by the ~~hearing panel~~ sentencing judge or the department and subject to supervision of the department.

(6) "Victim" means a victim as defined in 46-18-243."

{ Internal References to 46-23-103:
2-15-2302 }

Section 3. Section 46-23-201, MCA, is amended to read:

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"46-23-201. Prisoners eligible for nonmedical parole -- rulemaking. (1) Subject to the restrictions contained in subsections (2) through (5) and when in the board's opinion there is reasonable probability that a prisoner can be released without detriment to the prisoner or to the community, the board may release on nonmedical parole by appropriate order any person who is:

- (a) confined in a state prison;
- (b) sentenced to the state prison and confined in a prerelease center;
- (c) sentenced to prison as an adult pursuant to 41-5-206 and confined in a youth correctional facility;
- (d) sentenced to be committed to the custody of the director of the department of public health and human services as provided in 46-14-312 and confined in the Montana state hospital, the Montana developmental center, or the Montana mental health nursing care center.

(2) Except as provided in subsection(7), the board is prohibited from assigning conditions of parole that were not assigned by the sentencing judge or the department.

~~(2)~~(3) Persons under sentence of death, persons sentenced to the department who have been placed by the department in a state prison temporarily for assessment or sanctioning, and persons serving sentences imposed under 46-18-202(2) or 46-18-219 may not be granted a nonmedical parole.

~~(3)~~(4) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least

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one-fourth of the prisoner's full term.

~~(4)~~(5) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

~~(5)~~(6) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

~~(6)~~(7) For a prisoner sentenced to be committed to the custody of the director of the department of public health and human services as provided in 46-14-312:

(a) the board may require as a condition of parole participation in a supervised mental health treatment program to ensure that the prisoner continues to treat the prisoner's mental disorder; and

(b) parole may be revoked if a prisoner fails to comply with the terms of a supervised mental health treatment program described in subsection (6)(a), in which case the prisoner must be recommitted to the custody of the director of the department of public health and human services pursuant to 46-14-312.

~~(7)~~(8) If a hearing panel denies parole, it may order that the prisoner serve up to 6 years before a hearing panel conducts another hearing or review. The board shall adopt by administrative rule a process by which a prisoner may request an earlier hearing or review."

{ Internal References to 46-23-201:

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As of: April 16, 2014 (9:50am)

LC1j96

46-23-217 }

Section 4. Section 46-23-215, MCA, is amended to read:

"46-23-215. Conditions of parole. (1) A prisoner while on parole remains in the legal custody of the department but is subject to the orders of the board.

(2) When a hearing panel issues an order for parole, the order must recite the conditions of parole. The board is prohibited from assigning conditions of parole that were not assigned by the sentencing judge or the department.

(3) If restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a condition to pay restitution to the victim.

(4) The prisoner may not be paroled until the prisoner provides a biological sample for purposes of Title 44, chapter 6, part 1, if the prisoner has not already done so under 44-6-103 and if the prisoner was convicted of, or was found under 41-5-1502 to have committed, a sexual offense or violent offense as defined in 46-23-502. An order for parole or any parole agreement signed by a prisoner may contain a clause waiving extradition.

(3) Whenever a hearing panel grants a parole to a prisoner and the department or the sentencing judge requires ~~on the condition~~ that the prisoner obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the hearing panel or the presiding officer of the board or a designee may grant the prisoner a

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furlough, not to exceed two consecutive 10-day periods, for purposes of fulfilling the condition. While on furlough, the prisoner is not on parole and is subject to official detention as defined in 45-7-306. The prisoner remains in the legal custody of the department and is subject to all other conditions ordered by the hearing panel or the presiding officer of the board or a designee."

{ Internal References to 46-23-215:
46-23-210 * }

Section 5. Section 46-23-218, MCA, is amended to read:

"46-23-218. Authority of board to adopt rules -- purpose for training. (1) The board may adopt any rules that it considers proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings, videoconference hearings, telephone conference administrative reviews, progress reviews, clemency proceedings, ~~the conditions to be imposed upon parolees,~~ the training of board members regarding American Indian culture and problems, and other matters pertinent to service on the board.

(2) The legislature finds that American Indians incarcerated in state prisons constitute a disproportionate percentage of the total inmate population when compared to the American Indian population percentage of the total state population. The training of board members regarding American Indian culture and problems is necessary in order for the board to deal appropriately with American Indian inmates appearing

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before the board."

{ Internal References to 46-23-218:
46-23-210 }

Section 6. Section 46-23-1001, MCA, is amended to read:

"46-23-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of pardons and parole provided for in 2-15-2302.

(2) "Department" means the department of corrections provided for in 2-15-2301.

(3) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of the prisoner's term, subject to conditions imposed by ~~the board~~ the sentencing judge or the department and subject to supervision of the department.

(4) "Probation" means the release by the court without imprisonment, except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the department upon direction of the court."

{ Internal References to 46-23-1001:
61-8-731 * }

Section 7. Section 46-23-1002, MCA, is amended to read:

"46-23-1002. Powers of the department. The department may:

(1) appoint probation and parole officers and other employees necessary to administer this part;

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(2) authorize probation and parole officers to carry firearms, including concealed firearms, when necessary. The department shall adopt rules establishing firearms training requirements and procedures for authorizing the carrying of firearms.

(3) adopt rules for the conduct of persons placed on parole or probation, including conditions of parole, except that the department may not make any rule conflicting with conditions of parole ~~imposed by the board~~ or conditions of probation imposed by a court."

{ Internal References to 46-23-1002:

44-4-401 45-8-317 61-8-731 * }

Section 8. Section 46-23-1021, MCA, is amended to read:

"46-23-1021. Supervision on parole. (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole periods in accordance with the conditions set by the sentencing judge or the department. ~~board.~~

(2) The department shall assign personnel to assist a person who is eligible for parole in preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of parole must be signed by the parolee and given to the parolee and to the parolee's probation and parole officer, who shall report on the parolee's

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progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist the parolee in adjusting to community life, and inform the parolee of the restoration of rights on successful completion of the sentence.

(5) The probation and parole officer shall keep records as the board or department may require. All records must be entered in the master file of the individual.

(6) (a) Upon recommendation of the probation and parole officer, the board may conditionally discharge a parolee from supervision before expiration of the parolee's sentence if the board determines that a conditional discharge from supervision is in the best interests of the parolee and society and will not present unreasonable risk of danger to the victim of the offense.

(b) Any of the achievements listed in 46-23-1027(2) must be considered a significant achievement by the board in deciding whether to grant a conditional discharge from supervision to a parolee.

(c) If the board discharges a parolee from supervision, the department is relieved of the obligation of supervising the parolee.

(d) For good cause, the board may return a parolee who was conditionally discharged to the status of a regular parolee.

(e) Subsection (6)(a) does not prohibit the board from revoking the parole, as provided in 46-23-1025, of a parolee who has been conditionally discharged from supervision.

(f) If the department certifies to the board that the

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workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the board may not parole a prisoner to that district office unless it grants a conditional discharge to a parolee being supervised by that district office. The department may recommend parolees to the board for conditional discharge. The board may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

{ Internal References to 46-23-1021:
46-18-1003 46-23-1020 46-23-1020 }

- END -

{Name : Julianne Burkhardt
Title : Legislative Attorney
Agency: Legislative Services
Phone : 4025
E-Mail: jburkhardt@mt.gov}

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**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act revising parole criteria."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Nonmedical parole criteria --**

information the board may consider. (1) The board may release an eligible offender on nonmedical parole only when, in its opinion:

(a) there is a reasonable probability that the offender can be released without detriment to the offender or to the community;

(b) release is in the best interests of society;

(c) the offender is able and willing to fulfill the obligation of a law-abiding citizen; and

(d) the offender does not require continued correctional treatment or mental health therapy, vocational or other programs available in a correctional facility that will substantially enhance the offender's capability to lead a law-abiding life if released.

(2) Parole may not be ordered as an award of clemency or a reduction of sentence or pardon.

(3) For a prisoner sentenced to be committed to the custody of the director of the department of public health and human services as provided in 46-14-312:

(a) the board may require as a condition of parole

participation in a supervised mental health treatment program to ensure that the prisoner continues to treat the prisoner's mental disorder; and

(b) parole may be revoked if a prisoner fails to comply with the terms of a supervised mental health treatment program described in subsection (3)(a), in which case the prisoner must be recommitted to the custody of the director of the department of public health and human services pursuant to 46-14-312.

(4) In making its determination regarding nonmedical parole release, a hearing panel shall consider all available and pertinent information regarding the prisoner, including the following factors:

(a) the offender's maturity, stability, sense of responsibility, and development of traits and behaviors that increase the likelihood the offender will conform the offender's behavior to the requirements of law;

(b) the adequacy of the offender's release plan;

(c) the offender's ability and readiness to assume obligations and undertake responsibilities;

(d) the offender's education and training;

(e) the offender's family status and whether the offender has relatives who display an interest or whether the offender has other close and constructive associations in the community;

(f) the offender's employment history, occupational skills, and the stability of the offender's past employment;

(g) the type of residence, neighborhood, or community in which the offender plans to live;

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(h) the offender's past use of chemicals, including alcohol, and past habitual or abusive use of chemicals;

(i) the offender's mental and physical makeup;

(j) the offender's prior criminal record, including the nature and circumstances of the offense, date of the offense, and frequency of previous offenses;

(k) the offender's attitude towards law and authority;

(l) the offender's conduct, employment, and attitude in the institution, including particularly whether the offender has taken advantage of opportunities for treatment and whether the offender is clear of major disciplinary violations prior to the hearing;

(m) the offender's behavior and attitude during any previous experience of supervision and the recency of the supervision;

(n) the reports of any physical, psychological, and mental evaluations that have been made;

(o) written or oral statements from criminal justice authorities or any other interested person or the interested person's legal representative, including written or oral statements from a victim regarding the effects of the crime on the victim. A victim's statement may also include but is not limited to the circumstances surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the offender should be paroled.

(p) whether parole at this time would diminish the seriousness of the offense; and

(q) any and all other factors that the hearing panel determines to be relevant.

(5) A victim's statement may be kept confidential.

Section 2. Section 46-23-201 , MCA, is amended to read:

"46-23-201. Prisoners eligible for nonmedical parole -- rulemaking. (1) Subject to the restrictions contained in subsections (2) through ~~(5)~~ (4) and ~~when in the board's opinion there is reasonable probability that a prisoner can be released without detriment to the prisoner or to the community~~ the criteria in [section 1], the board may release on nonmedical parole by appropriate order any person who is:

- (a) confined in a state prison;
- (b) sentenced to the state prison and confined in a prerelease center;
- (c) sentenced to prison as an adult pursuant to 41-5-206 and confined in a youth correctional facility;
- (d) sentenced to be committed to the custody of the director of the department of public health and human services as provided in 46-14-312 and confined in the Montana state hospital, the Montana developmental center, or the Montana mental health nursing care center.

(2) Persons under sentence of death, persons sentenced to the department who have been placed by the department in a state prison temporarily for assessment or sanctioning, and persons serving sentences imposed under 46-18-202(2) or 46-18-219 may not be granted a nonmedical parole.

(3) A prisoner serving a time sentence may not be paroled under

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this section until the prisoner has served at least one-fourth of the prisoner's full term.

(4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

~~(5) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.~~

~~(6) For a prisoner sentenced to be committed to the custody of the director of the department of public health and human services as provided in 46-14-312:~~

~~—— (a) the board may require as a condition of parole participation in a supervised mental health treatment program to ensure that the prisoner continues to treat the prisoner's mental disorder; and~~

~~—— (b) parole may be revoked if a prisoner fails to comply with the terms of a supervised mental health treatment program described in subsection (6)(a), in which case the prisoner must be recommitted to the custody of the director of the department of public health and human services pursuant to 46-14-312.~~

~~(7)~~ (5) If a hearing panel denies parole, it may order that the prisoner serve up to 6 years before a hearing panel conducts another hearing or review. The board shall adopt by administrative rule a process by which a prisoner may request an earlier hearing or review."
{ Internal References to 46-23-201:

46-23-217x 3/11 }

Section 3. Section 46-23-202 , MCA, is amended to read:

"46-23-202. Initial parole hearing ~~---conduct of hearing.~~

Within the 2 months prior to a prisoner's official parole eligibility date or as soon after that date as possible, the department shall make the prisoner available for a hearing before a hearing panel. The hearing panel shall consider all available and pertinent information regarding the prisoner, including:

- ~~----- (1) the circumstances of the offense;~~
- ~~----- (2) the prisoner's previous social history and criminal record;~~
- ~~----- (3) the prisoner's conduct, employment, and attitude in prison;~~
- ~~----- (4) the reports of any physical, psychological, and mental evaluations that have been made; and~~
- ~~----- (5) written or oral statements from criminal justice authorities or any other interested person or the interested person's legal representative, including written or oral statements from a victim regarding the effects of the crime on the victim. A victim's statement may also include but is not limited to the circumstances surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the prisoner should be paroled. The victim's statement may be kept confidential the criteria in [section 1]."~~

{ Internal References to 46-23-202:

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46-24-212 }

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{Name : Rachel J. Weiss
Title : Research Analyst
Agency : Legislative Services Division
Phone : 406-444-5367
E-Mail : rweiss@mt.gov}